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January 14, 2005

BY HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

JAN 14 2004

Part of
Public Record

RE: Finance Docket No. 34335
Keokuk Junction Railway Co.--Feeder Railroad Development Application
--Line Of Toledo, Peoria & Western Railway Corporation Between
La Harpe And Hollis, IL

Dear Secretary Williams:

Keokuk Junction Railway Co. ("KJRY") hereby responds in opposition to Toledo, Peoria and Western Railway Corporation's ("TP&W") January 13, 2005 letter requesting that the scheduled January 26 closing deadline be delayed. TP&W's request is nothing but another request to stay the transaction and prevent service to the shippers. TP&W has previously sought such a stay and had its request denied. Now, under the guise of needing more time to discuss unresolved issues, it once again seeks further delay. The Board should not grant this request. As Chairman Nober found in denying the stay the first time, a stay, which is in effect what TP&W is seeking here, would "only serve to further delay, complicate, and increase the cost of restoring rail service to the Line." That was sound policy then and it is sound policy now.

As the basis for its request, TP&W claims that it needs more time because KJRY has not taken steps necessary to prepare for closing. That claim is entirely false. Indeed, as has been the case throughout this proceeding, it is TP&W that has refused to even discuss closing issues when asked by KJRY to do so. On the other hand, KJRY has, notwithstanding TP&W's refusal to discuss closing details with KJRY, taken as many steps as it can without TP&W's cooperation to close. KJRY is committed to closing by the Board's January 26, 2005 deadline. The Board should enforce its October 28 order, including the closing deadline of January 26, 2005, and if necessary, order TP&W to meet with KJRY and discuss the issues.

In the Board's October 28 decision ("Decision"), the Board granted KJRY's feeder line application and ordered that TP&W transfer the long-neglected La Harpe to Hollis line (the

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"Line") to KJRY "within 90 days after the service date of this decision." Decision, slip op. at 24. The 90th day after the October 28 is January 26, 2005, 12 days from today. The Decision did not require that closing wait until January 26; rather, that was simply the deadline to complete the transaction. Accordingly, shortly after the Board served the Decision, KJRY filed its notice accepting the Decision, and contacted TP&W to initiate discussions about the closing. TP&W simply ignored KJRY's efforts to initiate discussions. When approximately three weeks had elapsed without a response from TP&W to KJRY's initial letter seeking to discuss closing, and after a phone call from KJRY's Chief Financial Officer to RailAmerica went unreturned, KJRY again wrote TP&W to initiate actions needed to close the purchase. On December 7, TP&W finally responded to KJRY's numerous requests and did so by saying that such discussions would be "premature." *See* Exhibit 1 hereto.

TP&W also failed to accept the trackage rights agreement that KJRY had offered to TP&W for TP&W's continued access to the Mapleton Spur. Ordering Paragraph No. 5 of the Decision set December 2 as the deadline for TP&W to accept KJRY's trackage rights offer. TP&W allowed that deadline to lapse without accepting the agreement. Although submitting the information on reroll rail values specifically described in the Decision would have delayed TP&W's deadline to accept the trackage rights agreement, TP&W also refused to submit the requested reroll information to the Board. TP&W's failure to accept the trackage rights agreement, coupled with its failure to submit the specified information on reroll rail values, can only be seen as a rejection of the proffered trackage rights agreement. Had TP&W accepted that agreement, most of the unresolved issues listed by TP&W in its January 13 letter would already have been resolved. By not accepting the agreement, TP&W caused those issues to remain unresolved.

As it has done previously in this proceeding, TP&W is responsible for the problem about which it complains but seeks to blame KJRY for that problem. KJRY has approached TP&W at least three times to initiate discussion toward closing this transaction. TP&W has rejected all of those requests. TP&W now complains that the time remaining before the closing deadline is too short, yet it was TP&W that has refused thus far to discuss closing and who sought additional time to prepare its reconsideration petition;¹ thereby reducing the time available for the Board to rule on that petition before the closing date. These actions, like the myriad unscheduled pleadings submitted by TP&W in this case, are all part of a continuing effort by TP&W to postpone indefinitely the date on which it must finally sell the Line to someone that is genuinely interested in operating it. The Board should not accept any further delay.

The Board should not accept any further delay because shippers on the Line need service. KJRY has thus far been in contact with 5 of the shippers who used the Line before TP&W sold it to SF&L to be scrapped, and who would have used the Line since that time but for the

¹ On November 15, TP&W requested 20 additional days to prepare its reconsideration petition. By order served November 16, 2004, Chairman Nober generously granted TP&W 12 extra days to prepare its petition. Now, TP&W seeks to turn the Board's kindness on its head, complaining that the Board has delayed too long in deciding TP&W's petition.

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unavailability of service and astronomically high rates of TP&W. Those shippers have each prepared a letter for submission to the Board, expressing their support for the Board's order that the Line be sold to KJRY, and asking that the Board not allow any delay in the closing deadline established by the Decision. KJRY expects those letters to be submitted to the Board by January 18.

The shippers are also making plans to use KJRY's new service, based on the closing deadline set by the Board. Indeed, two shippers have already placed orders with KJRY for spotting of cars during the first week of February. Meanwhile, KJRY has established rates for traffic that it will handle for these and other shippers once it acquires the Line. KJRY has also had discussions with Union Pacific Railroad Company ("UP") and The Burlington Northern and Santa Fe Railway Company ("BNSF") about arranging interchange with those carriers. KJRY has also discussed with BNSF the restoration of the Bushnell crossing diamonds, and BNSF has agreed to restore those diamonds. In short, since TP&W has refused any cooperation, KJRY is doing what it can do on its own to prepare for closing.

The Board has once already denied a request by TP&W to stay the effect of the Decision. Knowing that there is no deadline for the Board to rule on its petition for reconsideration, and knowing that a petition for reconsideration does not stay the effect of the Decision or delay the closing date, TP&W now, at the eleventh hour, seeks yet another delay. TP&W's request should be denied and closing should go forward as scheduled so that KJRY can begin the process of restoring to the Line the service that TP&W has so long refused to provide. The unfortunate truth in this case is that, unless the Board *forces* TP&W to comply with the Decision by enforcing that Decision by its terms, TP&W will continue to do everything it can to drag its feet, raise objections and otherwise refuse to do what the Board has clearly told TP&W it must do – sell the Line to KJRY by January 26.²

The Board should leave no room for evasion by TP&W, and should hold to the original closing deadline of January 26. KJRY stands ready to take the steps needed to meet the Board's deadline. Indeed, because TP&W has refused to take any steps toward helping KJRY close the transaction, KJRY has taken the unusual step of making arrangements for the establishment of an escrow account with Chicago Title Insurance Co. for the benefit of TP&W. On January 26 and unless it is instructed otherwise, KJRY fully intends to "close" on that date by depositing the purchase proceeds into that escrow account and taking the steps necessary to serve the shippers, *i.e.* inspecting the track, beginning rehabilitation of the Line, and beginning basic operations.³

² Any additional time will also provide TP&W with an opportunity to sell pieces of the right-of-way, remove track, switches, and other materials, and otherwise take steps to further increase the costs of restoring service. Indeed, TP&W has admitted that it has previously sold pieces of the right-of-way and when KJRY asked TP&W for assurances that no such further actions or similar actions would be taken, TP&W refused to give those assurances.

³ KJRY has the available funds and has a guaranteed line of credit for \$7 million. Notwithstanding TP&W's claims otherwise, KJRY can obtain additional funds if in the

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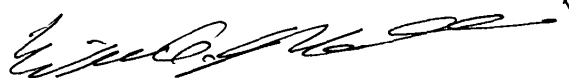
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As noted, most, if not all of the issues listed by TP&W are resolved in the trackage rights agreement and TP&W ought to accept it. If after closing and TP&W's acceptance of the trackage rights agreement there are still outstanding issues, KJRY stands willing, under Board oversight, to sit down and resolve those issues, but in no event should closing be delayed.⁴

If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: wmullins@bakerandmiller.com. There are an original and eleven copies of this letter. Please time stamp the extra copy and return to the courier for delivery to me. Furthermore, by my signature below, I certify that I have on this date caused copies of this submission to be delivered to Louis E. Gitomer and Gordon P. MacDougall by courier, and to be served on other parties of record by first class mail.

Respectfully submitted,



William A. Mullins

Attorney for Keokuk Junction Railway Co.

Enclosure

cc: All Parties of Record

extremely unlikely event it is necessary to do so. If the Board feels it is appropriate to do so, KJRY is also prepared to deposit additional amounts in the escrow account to cover any increase in the valuation price due to the supplemental evidence on the value of reroll steel. As such, the Board does not need to rule on the petition for reconsideration before the closing date. Indeed, in the context of analogous cases involving offers of financial assistance, the Board has allowed the purchase to proceed notwithstanding the existence of a petition for reconsideration and continuing disputes over the proper valuation. *Trinidad Railway, Inc.—Abandonment Exemption—In Las Animas County Co*; *Trinidad Railway, Inc.—Lease and Operation Exemption—Kern Valley Railroad Company*, F.D. No. 34087 (STB served Feb. 5, 2002); *KCT Railway Corporation—Abandonment Exemption—Between Lamar and Wiley, CO*; *In The Matter Of An Offer Of Financial Assistance*, AB-335 (Sub-No. 5X), 1992 ICC LEXIS 12 (ICC Jan. 17, 1992)

⁴ If the Board does grant an extension of the closing date, which it should not do, then the Board should grant KJRY a directed service order so as to provide KJRY operating authority over the Line in order for KJRY to meet its obligations to the shippers.



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December 7, 2004

Daniel A. LaKemper
General Counsel
Keokuk Junction Railway Co.
1318 South Johanson Road
Peoria, IL 61607

RE: Finance Docket No. 34335 – *Keokuk Junction Railway Co. – Feeder Railroad*
Development Application – Line of Toledo, Peoria & Western Railway Corp. Between
LaHarpe and Hollis, IL

Dear Mr. LaKemper:

I have your letter of November 29. It is premature to supply wire transfer instructions when neither the sale date nor the purchase price are known. Because the Toledo, Peoria & Western Railway Corp. ("TP&W") supplemented the record with a composite price for reroll, as requested in the STB decision, your client has an opportunity to reject any further terms that maybe established by the STB. Your client has rejected any settlement proposals from TP&W. You are advised that TP&W will not be willing to sell any of its property at below the constitutional minimum value and will ask for court review of any STB decision that it feels sets a price below that level.

As for the notion that Keokuk Junction Railway Co. ("KJ") has "an equitable interest in the entire line", there is no basis for such a fanciful claim. Your position merely confirms our belief that you immediately accepted the terms developed by the STB because you recognize that the real estate is worth substantially more than the value initially attached to it by the STB.

We see no need for any hi-rail of TP&W property given the stance of KJ.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Scott G. Williams', is written over a large, stylized oval graphic.

Scott G. Williams
Senior Vice President
and General Counsel

SGW:rsc